LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 2[illegible] 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street,
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

INDEX TO PETITION

	PAGE
Petition for Writ of Certiorari	1
No Opinions Below	2
Jurisdiction	2
Questions Presented	3
Constitutional Provisions Involved	4
Statement of the Case	5
Reasons Relied on for the Allowance of the Writ	10
I. The Judgment Sought To Be Reviewed Enters A Conflict With Decisions Of The Instant And Other Courts Of Appeals On The Same Matter, And With Applicable Decisions Of This Court On A Federal Question	10
II. This Is A Cause Of Public Importance	11

INDEX TO APPENDIX

Judgment sought to be reviewed	1
Order Denying Rehearing	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. .....

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully prays that a writ of certiorari issue in the above captioned case directed to the United States Court of Appeals for the Third Circuit to review its Judgment (App. 1) in appeal No. 14,137 dated and entered on March 5, 1963; and its Order Denying Rehearing (App. 2) dated and entered on March 27, 1963.

Jurisdiction.

NO OPINIONS BELOW

In the United States District Court for the Western District of Pennsylvania at Civil Action No. 12,643 the Memorandum Order (3 CCA App. 7a) appealed from was not accompanied by an opinion, and is not reported. The Judgments of the United States Court of Appeals for the Third Circuit (App. 1 and 2) sought to be reviewed herein were unaccompanied by an opinion and not reported.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C.A., Section 1254 (1); and the general supervisory power of this Court over lower Federal Courts.

The Judgment sought to be reviewed (App. 1) was dated and entered March 5, 1963. The Order of the Court of Appeals denying the timely Petition for Rehearing was dated and entered March 27, 1963. The time for filing this petition for writ of certiorari, therefore, expires June 25, 1963.

QUESTIONS PRESENTED

1. Is not a litigant entitled to notice and the right to be heard in advance of judgment, pursuant to the Due Process of Law Clause of the Fifth Amendment to the Constitution of the United States?

2. When it is a matter of record that judgments have been entered against a litigant without notice and the right to be heard thereon, and when attachment execution proceedings likewise without notice have been had thereon, has not the victimized litigant been deprived of property without due process of law in violation of the provisions of the Fifth Amendment to the Constitution of the United States?

3. When unallowable costs for printing are taxed against the unsuccessful appellant in the Court of Appeals by the Clerk instead of by the Court, pursuant to appellees' unserved Bills of Costs, and the amounts thereof are inserted in the Mandate by the Clerk of the Court without notice to or knowledge of the appellant and thus in violation of that Court's Rules providing for proof of service before filing and the right to be heard by the Court on allowability of costs in advance of the taxing and insertion in the Mandate; following which the Clerk of the District Court entered Judgments based thereon still without notice, pursuant to which the defendants then proceeded with attachment of plaintiff's bank accounts, with the result that plaintiff was taken by surprise, without knowledge of any of said proceedings until after the attachment of his bank accounts; have not such Judgments been entered through fraud and misconduct of adversaries and have not the refusals

of the District Court and the Court of Appeals to consider and adjudicate motions to vacate those Judgments pursuant to F.R.C.P. Rule 60 (b) resulted in deprivations of property without due process of law (1) conflicting with decisions of the instant and other Courts of Appeals on the same matter, (2) conflicting with applicable decisions of this Court on a federal question and (3) so far departing from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

4. Should not this Honorable Court reverse the Judgment sought to be reviewed, or at least remand the cause with directions that the issues involved be adjudicated on the merits, when it is patent as a matter of record that the issues involved have never been adjudicated in the lower Courts and that the decisions of the lower Courts are clearly erroneous?

CONSTITUTIONAL PROVISIONS INVOLVED

The provision of the Constitution of the United States involved herein is the Fifth Amendment, the pertinent portion of which (U.S.C.A., Constitution, Amendments 1 to 13, p. 172) is as follows:

"Amendment V. Due Process of Law . . . nor (shall any person) be deprived of life, liberty, or property, without due process of law: . . ."

STATEMENT OF THE CASE

The petitioner, Paul Ginsburg, seeks a review in this Honorable Court of a Judgment (App. 1) of the Court of Appeals for the Third Circuit dated and entered March 5, 1963, in Appeal No. 14,137, whereby "It is ORDERED that appellees' motion for an order directing appellant to pay a reasonable fee to defendants' counsel by way of a penalty, be and it is hereby denied. It is Further ORDERED that the appeal in the above case be and it is hereby dismissed." The Appeal was from a Memorandum Order (3 CCA App. 7a) of the United States District Court for the Western District of Pennsylvania dated and entered the 13th day of April, 1962. By the said Memorandum Order, Chief District Judge Wallace S. Gourley refused the plaintiff's unanswered Motion for Hearing and to Open and Vacate Judgments (3 CCA App. 6a).

The respondents' Motion to Dismiss Appeal had misrepresented to the Court of Appeals that it was barred by *res judicata*, in the face of a record which made it manifest that the issues involved had never been adjudicated and thus were incapable of becoming the subject of the doctrine of *res judicata*. Your petitioner's Answer to Motion to Dismiss Appeal showed that "Procedurally, the appellees' Motion to Dismiss Appeal fails to conform to the Rules and the accepted practice applicable to motions; and substantively, the Motion to Dismiss Appeal is wholly without merit and should be dismissed".

The petitioner's Answer also made it plain, *inter alia*, that so far as your petitioner is concerned, this litigation was terminated years ago, until he was improperly and illegally transformed into an unwilling defendant. This cause originally was commenced against the respondents, as defendants, for their unlawful and un-

constitutional violations of your petitioner's constitutional and civil rights. In commencing the action in the District Court your petitioner as a plaintiff relied upon not only the law of the Third Circuit as pronounced by Chief Judge Biggs of that Court in the case of *Picking v. Pennsylvania R. Co., et al.*, 151 F. 2d 240, rehearing denied 152 F 2d 753 (1945), and concurred in by Chief Judge Gourley of the District Court, but also the Law of the Land as pronounced by this Honorable Court. The said Chief Judges of the lower Courts, however, reversed themselves when confronted with the instant action against these respondents. Chief Judge Wallace S. Gourley of the District Court repeatedly decided that he had no jurisdiction over the subject matter, although he had repeatedly held that the actions of these respondents against your petitioner were "violative of the basic concepts of justice". Chief Judge John Biggs, Jr., and the Associate Judges of the Court of Appeals likewise repeatedly refused to review and reverse, or remand with instructions.

After your petitioner had spent much valuable time and money in his meritorious but unsuccessful attempts to be heard on the merits of his just claims, he abandoned the proceedings.

On August 13, 1958, after your petitioner had abandoned this cause, he was surprised with service by the U. S. Marshal of attachment execution proceedings whereby all of his accounts with the Mellon National Bank and Trust Company had been attached without any notice whatever. The attachment was based upon Judgments in the amount of a few hundred dollars which were void for fraud and misconduct of adversaries.

The fraud and misconduct consisted of the respondents' taxing unallowable costs in the Court of Appeals,

the Bills of Costs for which were filed by the Clerk without the required proof of service, followed by the Clerk's inserting those amounts in the mandates, with the result that the District Court Clerk entered them as Judgments against your petitioner.

After the aforementioned secret activities had taken place, your petitioner naturally proceeded with a Motion Under F.R.C.P. Rule 60(b) to have the Judgments opened and vacated, but the learned Chief District Judge Gourley declined jurisdiction. The Court of Appeals likewise refused to go into the merits of the fraud and misconduct resulting from the illegal taxing of unallowable costs done without petitioner's right to be heard thereon by that Court.

The results of these lower Court decisions manifested only that your petitioner had become a litigant without a Court. The Chief Judges and the Judges of the lower Courts tried to imply sanction of their indecisions by reason of this Honorable Court's refusal to review, although they were well advised that it had been repeatedly pronounced by the Chief Justice and Justices of this Honorable Court that its denial of certiorari does not imply approval of the Judgment sought to be reviewed or of its supporting Opinion.

Your petitioner, being justified in arguing that unadjudicated issues as herein are always still ripe for adjudication as herein, presented in the District Court his Motion for Hearing and to Open and Vacate Judgments (3 CCA App. 6a).

The purpose of the Motion for Hearing and to Open and Vacate Judgments was to obtain a hearing on the validity of Judgments entered against the plaintiff and against the Mellon National Bank and Trust Company,

Garnishee, and in favor of the defendants, and thereupon to open and vacate all of the said Judgments pursuant to F.R.C.P. Rule 60(b) for fraud and misconduct of plaintiff's adversaries; and also for being entered in violation of plaintiff's right under the Constitution and laws of the United States. *It is a matter of record that the plaintiff (petitioner herein) never had a single hearing thereon in any Court prior to or since the entry of the said Judgments.*

It is evident from the Memorandum Order (3 CCA App. 7a) of the learned District Judge that he thought there had been an adjudication and thus declined "to attempt to reopen the proceeding at this late date". This conclusion of the juris[illegible] however, conflicted with his prior refusals to entertain a motion under F.R C.P. Rule 60(b) on the sole ground of lack of jurisdiction; and with the prior refusals of the Court of Appeals to review and reverse, or even remand with directions to assume jurisdiction and enter an adjudication on the merits.

The printed Brief for Appellant and Appendix filed in the Court of Appeals (nine extra copies of which are lodged herein for the use of the Court), contains four fully supported arguments (pp. 5-8), as follows: (I) The Judgments Entered In The Lower Court Could Not Legally Have Been Based Upon The Mandate Of This Court In Appeal No. 13,598 Or Prior Mandates, As They Were Not Within The Compass Of The Mandates; (II) District Court Judges Are Not Only Bound By The Federal Rules Of Civil Procedure As By An Act Of Congress, Which Required Chief District Judge Gourley To Proceed Under Rule 60 (b); But They Are Also Bound By The Constitution Of The United States, Requiring The Court To Proceed With A Hearing In Advance Of Judgment; (III) This Court's Attempted Affirmance At No.

13,598 Of Chief District Judge Gourley's Claim That He Was Without Jurisdiction To Conduct A Hearing Is Of No Legal Consequence; (IV) The Costs Taxed Against Appellant By The Clerk Of This Court Were Not Allowable And The Judgments Based Thereon Are Void.

The printed Petition for Rehearing filed in the Court of Appeals (nine extra copies of which are lodged herein for the use of the Court), showed that the unsupported and insupportable typewritten Motion to Dismiss Appeal was not presented in the Court of Appeals until after the service and filing of the printed Brief for Appellant and Appendix (p. 1); that the Order of the Court of Appeals dismissing the Appeal could not be supported on the facts and the applicable law; and that (p. 5) although your petitioner agreed that there should be an end to litigation, it was respectfully submitted that the end should be a legal one only.

The denial of that Petition for Rehearing gave proof positive that both of the lower Courts are absolutely determined that so far as they are concerned, your petitioner will never be afforded his right to be heard on the issue of fraud and misconduct in the procurement of those void Judgments. *Wherefore, the only forum in which your petitioner has a chance of securing the protection and enforcement of his constitutionally guaranteed right to due process of law is herein.*

It has been well established in the Federal System that a litigant is entitled to two chances—the first in the District Court, and the second in the Court of Appeals. *It is obvious from the foregoing that your petitioner never had a single chance in either of the lower Courts, with the result that this Honorable Court actually has become petitioner's Court of first and only chance.*

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. The Judgment Sought To Be Reviewed Enters A Conflict With Decisions Of The Instant And Other Courts Of Appeals On The Same Matter, And With Applicable Decisions Of This Court On A Federal Question.

The federal question involved concerns a litigant's right to due process of law pursuant to the provisions of the Fifth Amendment to the Constitution of the United States, and particularly notice and the right to be heard in advance of judgment. Also involved is the litigant's right to the equal protection and enforcement of the Federal Rules of Civil Procedure, particularly Rule 60 (b).

Even more serious in the instant cause, has been the inability of your petitioner to obtain any adjudication whatever in either of the lower Courts on the merits of any of the issues involved. No circumstance could be more of a hindrance and obstacle in the way of the constitutional path to due process of law.

It is patent from the Records that after the lower Courts sanctioned the entry against your petitioner of fraudulent Judgments which were void for having been entered in advance of notice and the right to be heard thereon, and which would have been void even if entered after notice and the right to be heard thereon being for unallowable costs, those Courts then refused petitioner's right to have proceeded to open and vacate them under Rule 60 (b).

Compounding the foregoing issues and petitioner's unwarranted problems resulting therefrom, there has

never been a single adjudication on the merits of any of the issues. In the face of such Records, the Judgment (App. 1) sought to be reviewed, whereby the Appeal was erroneously dismissed on Motion, was ill founded on the doctrine of *res judicata. It is elementary that a mere decision is not an adjudication;* and that nothing but an adjudication can become the basis for invoking the doctrine of *res judicata*. This elementary proposition in and of itself makes it plain that the Judgment sought to be reviewed is clearly erroneous.

If the judgment sought to be reviewed does not enter a conflict with decisions of the instant and other Courts of Appeals on the same matter, and with applicable decisions of this Honorable Court on a federal question, it certainly should.

II. This Is A Cause Of Public Importance.

The Judgment sought to be reviewed, if not reversed, could adversely affect the constitutional and legal rights of all. The personal and professional detriment to your petitioner is incidental to that of the public. If the instant deprivations of property without due process of law can be inflicted upon an experienced member in good standing of the Bar of this Honorable Court like your petitioner, then they could be visited upon anybody. Thus it is respectfully submitted that this Petition is not the sort of application for relief which this Honorable Court might view as a matter personal only to your petitioner; but rather as a matter generally disaffecting the constitutional and legal rights of the public and, therefore, requiring a reversal by this Honorable Court.

When at the outset attachment execution proceedings were had against the petitioner based upon fraudulent Judgments entered for unallowable costs in advance of notice and the right to be heard, the situation then involved only an attorney and a Clerk. After knowledge of the situation, however, when your petitioner proceeded under the Rules and accepted practice to protect himself and his property from these damaging assaults, it then became a matter for the Federal Courts.

The District Court made a decision, but not an adjudication, that it was without jurisdiction. That decision was affirmed by the Court of Appeals which likewise declined jurisdiction. Repeatedly the District Court and Court of Appeals had declined jurisdiction or any consideration on the merits whatever, to the point where they all thought that the issues involved had finally become *res judicata*. Consequently your petitioner has never actually been afforded his right to a Day in Court, and as a result he has been seriously deprived of professional and personal property without due process of law.

Such actions of the lower Courts so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Otherwise, there can be no question that such unconstitutional practices will continue and disaffect the citizenry's legal and constitutional rights to which they, the people, are entitled.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street,
Pittsburgh 19, Pennsylvania

APPENDIX

Order of Court

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14137

PAUL GINSBURG, Appellant
v.
HORACE STERN and PATRICK N. BOLSINGER

Present:
BIGGS, Chief Judge, and MCLAUGHLIN, Circuit Judge,
and SHERIDAN, District Judge.

Upon consideration of the motion by appellees, and of the answer filed by appellant, and after hearing appellant,

It is ORDERED that appellees' motion for an order directing appellant to pay a reasonable fee to defendants' counsel by way of a penalty, be and it is hereby denied.

It is Further ORDERED that the appeal in the above case be and it is hereby dismissed.

BY THE COURT,
BIGGS
Chief Judge

Received and filed Mar 5, 1963
IDA O. CRESKOFF
Clerk

Order Denying Rehearing

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14137

PAUL GINSBURG, Appellant
v.
HORACE STERN and PATRICK N. BOLSINGER

SUR PETITION FOR REHEARING

Present:

BIGGS, Chief Judge, and MCLAUGHLIN, KALODNER, STALEY, GANEY and SMITH, Circuit Judges, and SHERIDAN, District Judge.

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

BY THE COURT
BIGGS
Chief Judge

Dated: March 27, 1963.

Received and filed Mar 27 1963.
IDA O. CRESKOFF
Clerk

Office Supreme Court, U.S.
FILED
JUL 9 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ELDER V. MARSHALL
CARL E. GLOCK, JR.
747 Union Trust Building
Pittsburgh 19, Pennsylvania
Counsel for Respondents

REED SMITH SHAW & McCLAY
Pittsburgh, Pennsylvania
Of Counsel

SMITH BROS. CO., INC., LAW PRINTERS, 435-439 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. .....

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

In the District Court (Civil Action No. 12643) as in the Court of Appeals for the Third Circuit (No. 14137), no opinion was filed, but only an unreported order of the Court of Appeals: 314 F.2d 500.

QUESTION PRESENTED

Whether certiorari should be granted on the identical facts presented to this Court at No. 634 October Term, 1961 and as to which certiorari was denied on February 19, 1962 (368 U.S. 987; 7 L.ed.2d 525; 82 S.Ct. 603) and rehearing denied on March 19, 1962 (369 U.S. 826; 7 L.ed.2d 792; 82 S.Ct. 827), where no new or additional facts have been presented.

STATEMENT OF THE CASE

In the District Court, this suit was entered by petitioner against Horace Stern, then the Chief Justice of the Pennsylvania Supreme Court, and Patrick N. Bolsinger, the Prothonotary of said court, for alleged violation of plaintiff's civil rights. The District Court dismissed the complaint (125 F.Supp. 596), and on appeal the Court of Appeals affirmed on June 2, 1955, holding that plaintiff "has not stated a cause of action cognizable in a United States District Court under the Civil Rights Acts * * *" (225 F.2d 245).

On said appeal, and on two later appeals by the plaintiff, the Court of Appeals allowed costs to defendants, the respective amounts being $215.25, $100.05 and $11 1.00. These costs were eventually taxed by the clerk of the District Court and entered by that court as judgmen s against the plaintiff and his garnishee. Shortly there fter, by means of an attachment execution proceeding, the costs were paid in full and the judgments satisfied.

Since 1959, plaintiff has tried repeatedly to have the judgments for costs vacated. However, the orders of the District Court refusing so to vacate invariably have been affirmed by the Court of Appeals: on February 17, 1959 (263 F.2d 458); on January 30, 1961; on October 19, 1961 (295 F.2d 698); on March 2, 1962 and June 14, 1962. Plaintiff applied to this Court at 634 October Term, 1961 for certiorari to review the decision of October 19, 1961. Certiorari was denied on February 19, 1962 (368 U.S. 987); and rehearing denied on March 19, 1962 (369 U.S. 826).

Notwithstanding the finality of this last decision, plaintiff again asked the District Court to open and vacate the judgments for costs. When the court refused, he again appealed to the Court of Appeals and when the latter dismissed the appeal (314 F.2d 500), he filed the current petition for certiorari.

The matter of which he presently complains is the identical matter of which he complained in his earlier application for certiorari (No. 634 October Term, 1961), namely, the refusal of the District Court and the Court of Appeals to vacate the judgments for costs.

ARGUMENT

Certiorari should be refused for a number of reasons:

1. This Court previously denied certiorari on the same set of facts as now presented.

2. The question raised is now moot, inasmuch as the costs have been paid with plaintiff's funds, and the judgments satisfied.

3. The costs in question were merely defendants' printing costs on appeal, and to this day plaintiff has not asserted that they were not incurred by the defendants. Rules 35 (2) and 35 (4) of the Court of Appeals for the Third Circuit (28 U.S.C.A. Rules, p. 224) provide that:

> "In all cases of affirmance of any judgment, order or decree * * * costs shall be allowed to the appellee or respondent, unless otherwise ordered by the court," and "the actual cost of printing briefs * * * shall be taxed as costs in the case."

4. In taxing the costs the clerk of the Court of Appeals violated no rule of that court.

5. Petitioner's claim is long since *res judicata*.

The first three reasons above require no argument. They are self-sustaining. Reasons 4 and 5 were argued at length when the case was last before this Honorable Court, and reference is respectfully made to respondents' brief in opposition to the petition for writ of certiorari at No. 634 October Term, 1961, in this Court. To reprint

the argument there made would only clutter up the record.

Certiorari should again be denied.

Respectfully submitted,

ELDER W. MARSHALL
CARL E. GLOCK, JR.
Counsel for Respondents

July, 1963
REED, SMITH, SHAW & MCCLAY
Pittsburgh, Pennsylvania
Of Counsel

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 29 1963
JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 254

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

PETITIONER'S REPLY BRIEF

In the supposed Brief in Opposition of the respondents, they have failed to comply with the provisions of paragraph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court". As a matter of fact, instead of presenting a brief in opposition pursuant to the Rules of this Honorable Court, the respondents actually have attempted to misrepresent the cause through re-presenting it in a self-serving way, in violation of the record facts and the applicable law and Rules of Court.

Contrary to the usual and accepted practice relating to briefs in opposition filed in this Honorable Court, the respondents have offered a Question Presented, a Statement of the Case and an Argument, obviously intended to confuse the true Questions Presented in the Petition,

distort the real Statement of the Case, and then discon-cert the Reasons Relied on for the Allowance of the Writ,— which countention will be completely estab-lished herein by your petitioner.

In the respondents' unauthorized Question Pre-sented, it is evident that they have overlooked or mis-apprehended one of this Honorable Court's most re-peatedly proclaimed pronouncements, that "the denial of certiorari does not imply approval of the decision for which review is sought or of its supporting opinion". See *Elgin, Joliet & Eastern Rwy. Co. v. Gibson,* 355 U. S. 897 (1957), citing *Brown v. Allen,* 344 U. S. 443.

When the respondents added to their Question Pre-sented that since the prior denial of certiorari "no new or additional facts have been presented", they made a misstatement that could not have been more obvious. The new and additional facts obviously presented herein are that the lower Courts will not perform their func-tions in connection with petitioner's right to be heard, regardless of how many times relief is sought therein under the Constitution and laws of the United States; and further that this Honorable Court in denying the prior Petition for Writ of Certiorari at No. 634 October Term, 1961, acted upon the premise that reviewing Courts will not review unadjudicated issues, and that the lower Courts should and would adjudicate the issues involved herein when your petitioner re-presented them below.

It is a matter of record herein that the lower Courts have never made an adjudication on the merits of any of the issues involved herein, stubbornly refusing to afford your petitioner his right to a single hearing on

the issue of the fraud and misconduct of his adversaries in procuring the entry of fraudulent judgments against him, and they never will do so unless ordered to by this Court. What more compelling reasons could call for an exercise of this Court's power of supervision?

At this point, it is apparent that the respondents at the outset of their supposed Brief in Opposition have confirmed your petitioner's right to a review in this Honorable Court.

The true Statement of the Case is contained in the Petition (pp. 5-9). The respondents' unpermitted Statement of the Case (pp. 2-3) is a reprehensible attempt to persuade this Court to overlook or forgive their then secret acts of misconduct through which they (a) obtained fraudulent judgments for unallowable costs; then (b) attached the following accounts of your petitioner in the Mellon National Bank and Trust Company:

Paul Ginsburg, Account No. 1 with a balance of $1,736.33
Paul Ginsburg, Account No. 2 with a balance of $1,161.89
Paul Ginsburg, Account No. 3 with a balance of $ 999.46
Paul Ginsburg, Account No. 4 with a balance of $1,326.15
Paul Ginsburg, Account No. 5 with a balance of $ 995.32

TOTAL FUNDS ATTACHED $6,219.15

without any notice whatever to your petitioner; thereupon (c) secretly collected the amounts of those fraudulent judgments from the garnishee (the attorneys for the respondents herein also being the attorneys for the garnishee herein); and (d) after all of said unprofessional acts constituting the fraud, falsely represented to this Honorable Court (p. 2) that the costs were not only paid in full but the judgments satisfied.

It is true that the attorneys for the respondents, as attorneys also for the garnishee, were easily able to and did collect in full from the garnishee Mellon National Bank and Trust Company; but it is not true, as represented, that the judgments against your petitioner have been satisfied as of this 25th day of July, 1963.

Your petitioner has been a member in good standing of the Bar of State and Federal Courts since October 8, 1932, and has twice been elected an Officer of the Allegheny County Bar Association in his native Pittsburgh. Until the fraudulent and secret Attachment Execution of his accounts at the Mellon National Bank and Trust Company on August 13, 1958, no such proceeding had ever been commenced against him. It should be obvious from his then rather substantial balances at the Mellon Bank, which he had maintained even more substantially for many years and his family for generations before him, as well as his exceptional reputation for immediate payment of every due obligation, that these respondents would never have had any problem whatever in collecting their costs from him if they were legally allowable and due (without benefit of judgments and/or attachment execution proceedings thereon). Under such circumstances, petitioner is justified in arguing that the fraud and misconduct of his adversaries was a deliberate illegal maneuver and trick by which the respondents could collect their unnecessary and unallowable costs to which they were not entitled, from your petitioner.

The Unauthorized Five Arguments (p. 4) Of The Respondents Can Be Disposed of With Dispatch.

1. This Court's prior denial of certiorari at No. 634 October Term, 1[illegible], cannot be advocated as a bar to the instant Petition by reason of the authoritatively supported Reply hereinabove made.

2. The naive and unsophisticated Argument that "The question raised is now moot, inasmuch as the costs have been paid with plaintiff's funds, and the judgments satisfied", is preposterous. Would it not be analogous for an Officer of the garnishee, the Mellon National Bank and Trust Company, to take the position that the Attorney General should drop a prosecution against him for embezzlement, because he had already dissipated the funds?

3. On numerous occasions the petitioner has cited the applicable Rules of the Court of Appeals to the attorneys for the respondents, with the result that your petitioner is justified in arguing that respondents' representation of those Rules to this Honorable Court is deliberately false. The applicable Rules are cited and discussed on page 8 of the printed Brief for Appellant and Appendix in the Court of Appeals, nine extra copies of which have been lodged with this Honorable Court, under Argument IV., *"The Costs Taxed Against Appellant By The Clerk Of This Court Were Not Allowable And The Judgments Based Thereon Are Void"*, which Argument is as follows:

> The controversial Bills of Costs taxed for the appellees were filed by Ida O. Creskoff, Esquire, Clerk of this Court, in violation of Rule 10 (4) of this Court for lack of service and lack of proof of service thereof upon your appellant.

The taxing of the said costs was in violation of this Court's Rule 35 (1), (2) and (4) because the costs were unallowable by reason of unnecessary printing, and, if allowable, your appellant was deprived of his right to be heard thereon by the Court in advance of judgment.

In view of the foregoing, it is not equitable or legal that the Judgments should have any effect; and the circumstances under which they were wrongfully entered, justify the granting of relief from their operation, pursuant to F.R.C.P. Rule 60 (b).

4. In view of the applicable Rules quoted hereinabove in the immediately preceding paragraph 3, there can be no question that, in taxing the costs, the Clerk of the Court of Appeals violated every Rule. The first Rule violated by the Clerk was No. 10(4), pursuant to which respondents' Bills for Costs should not have been received for filing; and thereupon said Clerk violated the other Rules in connection with the taxing of unallowable costs, thus denying petitioner the right to be heard thereon.

5. For the respondents to invoke the doctrine of *res judicata* herein, is actually absurd unless, of course, they can cite legal authorities to support the proposition that the repeated refusal to adjudicate issues renders those issues *res judicata*. It is apparent from the Record that the decisions of the lower Courts constituted nothing more than refusals to adjudicate. Under such circumstances, is it not offensive for counsel to try to get the highest judicial tribunal in the United States to sanction their invoking of that doctrine?

The Respondents' Brief Exhibits a Lack of Respect For This Honorable Court.

By presenting the unauthorized County Court type of Brief which they did, instead of a real brief in opposition pursuant to the Rules of this Honorable Court, the respondents' attorneys have evidenced their lack of respect because their Brief has so distorted the facts material to the consideration of the Questions Presented, and so confused the Reasons Relied on for the Allowance of the Writ, that your petitioner has been obliged to reply to irrelevant, impertinent, false and scandalous matter, which could have been obviated with a proper brief in opposition.

The Petitioner Asks Very Little of the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Your petitioner has unsuccessfully beeen seeking the right to be heard on the issue of the fraud and misconduct of his adversaries in their procurement of judgments for unallowable costs in advance of notice to him and the right to be heard thereon, after the entry of which they attached his bank accounts without notice to him and subsequently obtained full satisfaction secretly from the garnishee, and did not even satisfy the judgments against him. The lower Courts have stubbornly refused to afford him said right to be heard (a right which they have not given him and cannot take away).

The only question thus before this Honorable Court of last resort is whether or not it will afford him the

protection and enforcement of his rights under the Constitution and laws of the United States.

The fundamental issue before this Honorable Court is actually that simple.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner.

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.

Dated: 25 July 1963.

Office-Supreme Court, U.S.
FILED
NOV 6 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

MOTION TO REMAND
And, In The Alternative,
PETITION FOR REHEARING

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street,
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-438 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to vacate its Order entered on October 14, 1963, denying his petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U.S. 98, 1957); then to grant the petition for writ of certiorari and vacate the Judgment of the Court of Appeals sought to be reviewed (App. 1); and thereupon to reverse the said Judgment sought to be reviewed, and remand (28 U. S. C., section 2106) the

above entitled cause to the Court of Appeals for further proceedings (*United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355 U. S. 233, 1957; citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh v. United States*, 352 U.S. 1); requiring the said Court to enter an adjudication on the merits as required (*United States v. International Building Co.*, 345 U.S. 502, 506, and see also 354 U.S. 393); and, in the alternative,

PETITION FOR REHEARING

The Petition for Rehearing of Paul Ginsburg, petitioner, respectfully prays that this Honorable Court will grant a rehearing of his Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit, and

In support of his Motion to Remand and, in the alternative, Petition for Rehearing, it is averred:

1. The above captioned proceeding came before this Honorable Court on the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit, the respondents' Brief in Opposition and Petitioner's Reply Brief.

2. In the petitioner's said Petition, the Questions Presented were as follows:

> **(1) Is not a litigant entitled to notice and the right to be heard in advance of judgment, pursuant to the Due Process of Law Clause of the Fifth Amendment to the Constitution of the United States?**

(2) When it is a matter of record that judgments have been entered against a litigant without notice and the right to be heard thereon, and when attachment execution proceedings likewise without notice have been had thereon, has not the victimized litigant been dprived of property without due process of law in violation of the provisions of the Fifth Amendment to the Constitution of the United States?

(3) When unallowable costs for printing are taxed against the unsuccessful appellant in the Court of Appeals by the Clerk instead of by the Court, pursuant to appellees' unserved Bills of Costs, and the amounts thereof are inserted in the Mandate by the Clerk of the Court without notice to or knowledge of the appellant and thus in violation of that Court's Rules providing for proof of service before filing and the right to be heard by the Court on allowability of costs in advance of the taxing and insertion in the Mandate; following which the Clerk of the District Court entered Judgments based thereon still without notice, pursuant to which the defendants then proceeded with attachment of plaintiff's bank accounts, with the result that plaintiff was taken by surprise, without knowledge of any of said proceedings until after the attachment of his bank accounts; have not such Judgments been entered through fraud and misconduct of adversaries and have not the refusals of the District Court and the Court of Appeals to consider and adjudicate motions to vacate those Judgments pursuant to F.R.C.P.

Rule 60 (b) resulted in deprivations of property without due process of law (1) conflicting with decisions of the instant and other Courts of Appeals on the same matter, (2) conflicting with applicable decisions of this Court on a federal question and (3) so far departing from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

(4) Should not this Honorable Court reverse the Judgment sought to be reviewed, or at least remand the cause with directions that the issues involved be adjudicated on the merits, when it is patent as a matter of record that the issues involved have never been adjudicated in the lower Courts and that the decisions of the lower Courts are clearly erroneous?

3. *It was plainly evident from the said Petition, that all of the Questions Presented should have been answered in the affirmative.*

4. In the supposed Brief in Opposition of the respondents, they failed to comply with the provisions of paragraph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court". As a matter of fact, instead of presenting a brief in opposition pursuant to the Rules of this Honorable Court, the respondents actually have attempted to misrepresent the cause through re-presenting it in a self-serving way, in violation of the record facts and the applicable law and Rules of Court.

5. Petitioner's Reply Brief showed that contrary to the usual and accepted practice relating to briefs in opposition permitted to be filed in this Honorable Court.

the respondents offered a Question Presented, a Statement of the Case and an Argument, obviously intended to confuse the true Questions Presented in the Petition, distort the real Statement of the Case, and then disconcert the Reasons Relied on for the Allowance of the Writ,—which contention was entirely established therein by your petitioner. Furthermore, it was established in the Reply Brief how obviously untenable and insupportable were the respondents' unsound arguments, and then how little your petitioner actually was seeking from the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States,—*merely the right to be heard in advance of judgment.*

6. It is respectfully submitted that upon the record herein, this Honorable Court should review and reverse or review and remand; and that the only legal justification for the refusal to review and reverse, could be the fact that the Judgment sought to be reviewed was not adjudicated on the merits and, as a matter of practice, this Honorable Court declines to review unadjudicated issues. *United States of America, Petitioner, v. Shotwell Manufacturing Company, et al., Communist Party v. Subversive Activities Control Board, Mesarosh v. United States, supra.*

7. In view of the averments of the immediately preceding paragraph, and particularly because your petitioner has been seeking without any consideration or success whatever the protection and enforcement of his rights under the Due Process Clause which the jurists have sworn to uphold, this Honorable Court's attention is drawn to its pronouncements in the case of (p. 506) *United States v. International Building Co., supra*, as follows: "But unless we can say that they were an adjudication on the merits, the doctrine of estoppel by judgment would serve an unjust cause; it would become a

device by which a decision not shown to be on the merits would forever foreclose inquiry into the merits. Estoppel by judgment includes matters in a second proceeding which were actually presented and determined in an earlier suit. See *Commissioner v. Sunnen, supra*, at 598"; as well as its decision reported in 354 U. S. 393, whereby it remanded a cause to the lower Court to pass upon the issues of protection under the Due Process Clause.

8. A remand of the instant cause as sought herein is also required pursuant to this Honorable Court's power of supervision, *because it is so obvious that the Court of Appeals failed to accompany the Judgment sought to be reviewed (App. 1) with an opinion or even assign any reasons therefor.* Thus the Court of Appeals did not comply with the usual and accepted practice relating to opinions of Court or with the provisions of the applicable Canons 19, 20 and 22 of the Canons of Judicial Ethics. In this respect too, your petitioner has been deprived of his guaranteed right to due process of law. The said right to an opinion is also required by the Right to Know, and at this point it is submitted that the Judgment sought to be reviewed could not have been accompanied by a *supporting opinion*

9. Under the Constitution and laws of the United States, everybody is entitled to due process of law, as sought herein. Both prior to and since the entry of this Court's Order denying the instant petition for writ of certiorari, this Honorable Court has granted writs of certiorari or remanded causes on innumerable less cogent applications than the instant one.

10. *Prior to this cause* advocated on behalf of petitioner, whose petition should and could be granted

at no cost to the government, this Honorable Court sanctioned proceedings whereby nine Negro children were assisted in attending a public school in Little Rock, Arkansas, at an estimated cost to our government of $5,000,000.00. The Court, furthermore, granted petitions on behalf of persons charged with activities subversive to our government, meticulously guaranteeing even their rights to due process of law. It is also common knowledge that innumerable applications of admitted criminals who have confessed the commission of serious crimes have been granted in the interest of due process of law.

11. *Since the denial of the instant petition* (one week later), this Honorable Court continued its policy of such protection and enforcement of rights to due process of law. On October 21, 1963, it was reported in the *Pittsburgh Press* that this Honorable Court on that day (a) granted the petition of Mr. Vito Genovese, "recently identified as 'boss of all bosses' of the Cosa Nostra crime cartel", whereby this Court "In a brief order vacating the 1959 convictions of Genovese and nine co-defendants, the high court directed the Second U. S. Circuit Court of Appeals to take another look at the case in light of a Supreme Court decision last term"; (b) this Court "Reversed the convictions of 373 Negro students found guilty of breach of the peace for demonstrating against segregation policies at Orangeburg, S. C., in 1960. The court had sent the case back to South Carolina last term for rehearing and the State Supreme Court had upheld the convictions. Today's brief order was a summary reversal of the state action"; (c) this Court "Agreed to hear arguments on a challenge to Delaware's recent legislature reapportionment. Four cases from other states also will be heard this year";

and (d) this Court "Granted a hearing to Jesse James Arnold and George Dixon, two Negroes sentenced to death for a 1961 robbery-murder in North Carolina. Their appeal said systematic exclusion of Negroes from the grand jury invalidated the indictment".

12. In view of the averments of paragraphs 9, 10 and 11, your *petitioner repeats that he has asked very little of this Honorable Court in petitioning for the right to be heard in advance of judgment.* It is well known that your petitioner, a member in good standing of the Bar of this Honorable Court, has for many years been advocating the protection and enforcement of his clients' rights to due process of law. Under such circumstances and in view of the foregoing, it is respectfully submitted that he, himself, is indeed entitled thereto.

13. Thus it is respectfully submitted that upon reconsideration of his cause, the Court should remand the cause for further proceedings, or grant a rehearing of the Petition for Writ of Certiorari.

WHEREFORE, petitioner respectfully prays that this Honorable Court will enter an Order granting his Motion to Remand or allowing his Petition for Rehearing.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner.

Dated: 4 November 1963.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 23 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street,
Pittsburgh 19, Pennsylvania

SMITH BROS., CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to enter an Order directed to Hon. John F. Davis, Clerk of this Court, requiring and compelling the said Clerk to perform his mandatory and ministerial functions in respect to the above entitled cause by docketing and submitting the petitioner's Motion to Remand to the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States for consideration and adjudication on the merits thereof; and in support hereof avers:

Motion for Consideration by the Court.

1. On November 6, 1963, petitioner's Motion to Remand and, in the alternative, Petition for Rehearing, which fully complied with the accepted practice and the applicable Rules of this Court, were lodged in the Office of the Clerk of this Honorable Court. At that time the bonded Clerk had an absolute duty to docket those pleadings and submit them to the Court for consideration on the merits.

2. It is elementary that the functions of a Clerk are strictly ministerial and never judicial. There are no substantive exceptions; and the only procedural ones, that cannot actually be regarded as exceptions, are found in this Honorable Court's Rules 34 relating to enlargement of time and 53 relating to proceedings in forma pauperis, both of which are wholly inapplicable herein. It follows, therefore, that for all purposes in the instant proceeding, there are absolutely no exceptions. Even if this Honorable Court's Rules contained provisions for delegation of judicial functions, they would be unenforceable. Consequently, the Clerk was forbidden from examining those pleadings for the purpose of adjudicating them on the merits. Chief Deputy Clerk Cullinan, nonetheless, examined those authoritatively self-sustaining pleadings for such purpose, and erroneously concluded that both said pleadings together merely constituted a petition for rehearing, with the result that only the Petition for Rehearing was docketed and submitted to the Court and not the Motion to Remand. Mr. Cullinan's unlawful and unconstitutional usurpation of the functions of this Honorable Court were condoned and concurred in by Mr. Davis, the Clerk of the Court.

3. Mr. Cullinan's "judgment" was not only erroneous, but also unlawful. It is incredible that the rights

of litigants in Courts of Record can be illegally and unconstitutionally destroyed at the whim and caprice of a Clerk in advance of filing the pleadings. In the first place, Messrs. Davis and Cullinan are not "learned in the law". In the second place, even if they had become worthy of being referred to as "learned in the law", it is obvious from their erroneous and unwarranted conclusions that they actually are not, because they apparently were unable to comprehend either the presence of all the essential ingredients and elements in the Motion to Remand or this Honorable Court's pronouncements made in the cases cited therein as authority for your petitioner's right to have this cause remanded.

4. Counsel for petitioner complained to Mr. Cullinan about his actions in re using to docket and submit the said Motion to Remand. Mr. Cullinan nevertheless refused to change his decision, but stated that if a new printed Motion to Remand were lodged with him, he would docket and submit it to the Court.

5. Counsel for petitioner thereupon forwarded a new authoritatively self-sustaining printed Motion to Remand, which was lodged with the Clerk. Mr. Davis then sanctioned and continued Mr. Cullinan's prior actions and refused to docket and submit the new Motion to Remand.

6. It cannot be denied that Messrs. Davis and Cullinan by their actions have unlawfully usurped judicial functions of this Honorable Court. Nor can it be denied that a most dangerous precedent could be set, if this Honorable Court should not act now to retrieve and perform its own functions. In view of the nature of their usurpation and the evident bias and damages

resulting therefrom to your petitioner, it is respectfully submitted that the greatest danger lies in the fact that Messrs. Davis and Cullinan supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the justices of this Honorable Court perform their judicial functions behind the closed doors of their chambers, where they are unapproachable. Thus your petitioner is justified in arguing that Clerks should never be permitted to perform any judicial functions, because of their availability and susceptibility to being improperly influenced.

7. Presumptuously, Messrs. Davis and Cullinan in their written communications to counsel for petitioner in effect assured him that this Honorable Court has delegated these functions to them. If so, which petitioner doubts, these Clerks have made it manifest that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States have unlawfully delegated judicial powers and duties to persons whose authorized duties are merely ministerial. Has this unlawful delegation of judicial functions actually been made and authorized by this Honorable Court or has it really been a usurpation, as contended by your petitioner? This question must hastily be answered by this Honorable Court for its own sake!

8. It should be readily apparent to anybody really learned in the law that the arbitrary actions of these Clerks have brought about deprivations of federally guaranteed property and civil rights. It is apparent from the Record that petitioner has been unsuccessfully seeking his guaranteed right to be heard in advance of judgment.

9. Since the illegal actions of these Clerks have deprived your petitioner of his federally guaranteed right to litigate with due process of law, in a case involving substantial deprivations of property and civil rights, they have become personally liable to your petitioner for the damages resulting therefrom.

10. Whether or not these Clerks are in favor of the Civil Rights Acts, they have violated them through their said usurpation of judicial functions, rendering themselves personally liable not only in District Court civil rights actions, but also in actions on their bonds.

11. It might be contended that the crucial question could be whether or not their unlawful usurpation of this Honorable Court's judicial functions has stemmed from an unlawful delegation. This question, of course, should be answered by this Honorable Court, because the Right to Know of the citizenry in general and the members of the Bar in particular, requires it. Once they know this answer, litigants and their attorneys will be in better position to know how to handle their cases.

12. Your petitioner contends, however, that for all practical purposes there is no such crucial question, because the delegation of such judicial functions is quite as unlawful as the usurpation of them. It necessarily follows that regardless of such actions whether by usurpation or delegation, the actions of these Clerks remain a nullity.

13. In view of the foregoing, it would seem that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States of America have no choice but to grant the instant Motion.

Although your petitioner claims usurpation, and the Clerks claim delegation, the awful truth is that a meticulous regard for the fair and proper administration of justice in the Federal System indeed requires that this Honorable Court direct its Clerk to docket the petitioner's new Motion to Remand as of November 6, 1963, and then to submit copies thereof to the Chief Justice and the Associate Justices of this Honorable Court for its consideration and adjudication on the merits.

14. In view of the current unlawful performances of judicial functions by these Clerks, counsel for petitioner and other practitioners are certainly justified in wondering how many prior denials of authoritatively self-sustaining pleadings, ostensibly presented to this Honorable Court in other cases during the past several years, have actually been denied by Chief Deputy Clerk Cullinan, with or without the knowledge and sanction of the then Clerk of the Court, instead of actually being denied by this Court after its own careful consideration of the merits.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

Office-Supreme Court, U.S.
FILED
MAR 19 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

PETITION FOR REHEARING SUR MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

PETITION FOR REHEARING SUR MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paul Ginsburg's Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court respectfully represents:

1. On February 24, 1964, this Honorable Court entered the following Order in the above entitled case: "The motion for docketing and submission of petitioner's motion to remand for consideration on the merits is denied".

2. It was quite evident from your petitioner's Motion for Docketing and Submission of Petitioner's Mo-

tion to Remand for Consideration on the Merits by the Court; that the Clerk of this Court and his Chief Deputy Clerk had deliberately refused to docket and submit to this Honorable Court for its consideration his timely and authoritatively self-sustaining Motions to Remand.

3. Although the duties and functions of the Clerks are strictly ministerial, the said Clerks nevertheless in so doing were exercising judicial functions. In other words, instead of docketing those Motions to Remand and submitting them to the Court for a judicial adjudication in accordance with the Constitution and laws of the United States and the usual and accepted practice; the Clerks themselves examined those pleadings and "judicially" concluded (erroneously) that they actually constituted petitions for rehearing (although applicable decisions of this Honorable Court cited therein made it plain beyond question that those pleadings truly were motions to remand), and thus they refused to docket those pleadings and submit them to this Honorable Court as they were duty bound to do.

4. The petitioner further alleged in the said Motion that those actions of the Clerks either constituted an unlawful usurpation by them of this Honorable Court's judicial functions, or had been an unauthorized delegation by this Court of judicial functions to the Clerks; and that in either event, the Clerk's actions were a nullity.

5. The petitioner argued therein that one of the great dangers in allowing Clerks to make judicial decisions is the fact that they supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the

justices of this Honorable Court perform their judicial functions behind the closed doors of their chambers, where they are unapproachable.

6. Because the petitioner had contended that those actions of the Clerks resulted either from an unlawful usurpation or delegation of judicial functions and duties, this Honorable Court's Order entered February 24, 1964, has made it crystal clear that those judicial functions actually were delegated, incredible as that would seem.

7. Litigants like your petitioner who have entrusted the consideration and determination of their extremely important rights to the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, should not be compelled by them to be subjected to the prejudicial whims and caprice of Clerks.

WHEREFORE, this Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court should be granted.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court, pursuant to the provisions of paragraph 1 of Rule 58, is presented in good faith and not for delay.

PAUL GINSBURG
Counsel for Petitioner